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IN THE

Supreme Court
of the
United States

OCTOBER TERM, 1954

NO. 99

EARNEST T. BUDBERG, ET AL.,
Appellants,

V.

COUNTY OF SANGAMON, ET AL.,
Appellees,

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF ILLINOIS

MOTION BY APPELLEES TO DISMISS APPEAL AND STATEMENT IN SUPPORT OF THE MOTION

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Now comes the Appellees in the above case by George P. Coutrakon, State's Attorney of the County of Sangamon, State of Illinois, their attorney and move the Court to dismiss the Appeal and as grounds for said motion show:

The record fails to show that the validity of the Illinois Statute is drawn in question on the ground of its being repugnant to the Constitution of the United States, and fails to show that the decision of the Supreme Court of Illinois was in favor of its validity because its validity was not passed up by the Supreme Court of Illinois.

STATEMENT IN SUPPORT OF MOTION BY APPELLEES TO DISMISS APPEAL

The Supreme Court of Illinois did not construe the Statute to authorize the Board of Review to assess the property of Appellants 100% higher than other similar property in Woodside Township.

The Supreme Court of Illinois held the complaint failed to show or allege that the Board of Review assessed the property of Appellants 100% higher than other similar property in Woodside Township.

The Appellants in their jurisdictional statement have omitted material allegations of the complaint. First, they fail to state that the complaint alleged that the assessment made by the Assessor of Woodside Township was uniform. Second, they fail to state that the complaint alleged that the Assessor of Woodside Township in assessing the property of Appellants, the leaseholds, assessed them on the basis of the nearest $10 of the first annual rental payable under the leases.

While the motion to dismiss admitted all facts pleaded, the complaint must be construed as a whole, which was done by the Supreme Court of Illinois; and the Court held that the complaint failed to allege or show that the Board of Review assessed the property of Appellants 100% higher than other similar property in Woodside Township.

The complaint on any fair construction shows that the allegation that the property of Appellants was assessed 100% higher than other property in the Township is based on the allegation that the assessment made by the local assessor was uniform.

The Supreme Court of Illinois held that the method alleged as to assessment of the leaseholds showed the assessment was not uniform.

The Court further held that the complaint showed that Appellants based their allegation that the property was assessed 100% higher than other property in the Township on the legal assumption that the assessment by the local assessor was conclusive.

The allegations of the complaint do not show that the Board of Review made, nor does the Supreme Court of Illinois construe the statute as authorizing the Board of Review to make, a non-uniform assessment or an assessment disproportionate to the assessment of other

property in the Township. On the contrary, the compaint, and the opinion of the Supreme Court of Illinois shows that the Court held that the complaint, failed to allege facts showing a non-uniform or disproportionate assessment. It is clear that the allegation that the assessment made by the Board was 100% higher than the assessment of other property in the township is predicated on the allegation that the assessment made by the local assessor was uniform. Assuming that this allegation alleges an issuable fact, the allegation is contradicted by the further allegation that the local assessor assessed the leaseholds on the basis of the nearest $10 of the first annual rental due under the leases, disregarding other material factors, and thus showing affirmatively that the assessment by the local assessor was not uniform. In Paragraph 11 of the Complaint (Abstract 7, Supreme Court of Illinois Rec.....,) it is alleged "That under date of September 26, 1953, the County Judge of Sangamon County forwarded a letter to all Lake Springfield Leaseholders advising that the Board of Review had authorized him to state that they would revise all lot valuations by uniformly assessing them at the nearest ten dollars of the first annual rental before the State equalization multiple, (now 4.166), is applied, and Plaintiffs allege that this is the basis upon which the tax assessor valued such lots in 1951, prior to the

act of the Board of Review increasing such valuations by 100 per cent." It is a cardinal rule of all systems of pleading that a specific allegation prevails over a general one, in case of inconsistency. And the foregoing proposition is correct regardless of whether the complaint showed that the Appellants assumed that the assessment by the local assessor was conclusive, when it appears from the complaint that the assessment was not uniform.

From these holdings it is clear that the Supreme Court of Illinois did not construe the Statute to authorize the Board of Review to assess the property of Appellants 100% higher than other property, but on the contrary held that the complaint failed to show that the Board had assessed the property 100% higher than other property.

The Court held the Statute authorized the Board to fix the value 100% higher than that fixed by the local assessor because his valuation was not conclusive, and because the complaint showed his assessment was not uniform.

A reference to the Statutes of Illinois set forth in Brief of Appellee pages 14-15 will show that the assessment made by the local assessor was not uniform because the assessor disregarded other material and necessary factors in fixing the fair cash value of the leasehold estates. In the opinion the Supreme Court of Illinois

stated that "The property with which the Board of Appeals (Review) was concerned is unique both physically and legally. It borders on the lake, and is occupied under long term leases from the City of Springfield. It seems clearly to be a separate "class of property" within the meaning of the Statute."

It is unique legally because the method of ascertaining the fair cash value is not the same as that for ascertaining the same value on estates in fee. But in passing on the sufficiency of the complaint the Court did not hold that the only uniformity required was uniformity as to leaseholds, and that there was no disproportionate valuation with respect to the leaseholds. The opinion shows that the Court assumed both with respect to the leaseholds and the improvements thereon that the law required uniformity in relation to the valuation of the other property in the township, and did not permit a disproportionate valuation as between the two, all of which was in accordance with the theory of Appellants Complaint. But the Court held that the complaint failed to allege and show that the assessment made by the Board of Review was 100% higher than the valuation placed on the other property in the Township, for the reasons heretofore stated.

None of the cases cited by Appellants are apposite.

Hanover Fire Ins. Co. v. Carr 272 U. S. 494 71 L. Ed 372 reversing Hanover Fire Ins. Co. v. Carr 317 Ill. 366, did not involve the question of the sufficiency of the pleading to present the question of whether the Statute authorized an assessment in violation of the fourteenth amendment, and the Supreme Court of Illinois held that the Statute authorized an assessment which this Court held was non-uniform and violated the equal protection clause of the Fourteenth amendment, holding that the fact the Insurance Company was a foreign corporation was not a sufficient basis for classification when the company had complied with all other Statutes which were a condition precedent to the right to do business in Illinois.

CONCLUSION

The Record fails to show that the Court has jurisdiction but on the contrary shows this Court has no jurisdiction.

We therefore submit the Appeal should be dismissed.

Respectfully submitted

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